

Debbie Beadle

From: Evan Maxim
Sent: Thursday, September 20, 2012 12:19 PM
To: Debbie Beadle
Subject: FW: Potential Conflicts with State and Federal Laws

Follow Up Flag: Follow up
Flag Status: Flagged

EXHIBIT NO. 215

Public Comment

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

From: Mahbubul Islam [<mailto:Islam.Mahbubul@epamail.epa.gov>]
Sent: Tuesday, September 18, 2012 12:22 PM
To: Evan Maxim; Kamuron Gurol
Cc: Kathy Richardson; Michael Luxenberg
Subject: Potential Conflicts with State and Federal Laws

Hi Evan and Kamuron,

I want to bring to your attention that several of the 17 major items currently discussed by the Planning Commission, if moved forward, may not be meeting a well established federal and state water quality law and its implementing regulations, generally termed as "antidegradation." In the Federal arena, Section 303(c) of the U.S. Clean Water Act and the implementing regulations codified as 40 CFR 131.5 and 131.21 contain this requirement. Like all other states in the country, Washington is required to meet this federal requirement. Washington, with EPA's approval, established state laws (WAC 173-201A-300 through 330) to adhere to this federal requirement. This requirement is applicable to all state surface waters (streams, creeks, wetlands, etc) whether the state government (i.e., Department of Ecology), the county government (i.e., King County), or the local government (i.e., Sammamish) has the regulatory authority and implementation responsibility for managing such surface waters. In Washington, the Growth Management Act (GMA) placed on the local government the regulatory and management responsibility of the critical areas containing surface waters such as wet lands, streams, creeks, etc.

Items such as 2-10,2-11, 2-12, 3-17,3-18, 3-19, 3-21,4-15 (not an inclusive or definite list), if adopted as proposed will increase cumulative effects and thereby will add degradation to the existing water quality. In Sammamish, most of our wetlands and streams eventually drain out to Lake Sammamish, Beaver Lake and Pine Lake, and other creeks leading to these lakes. Washington Department of Ecology listed many of Sammamish water bodies (Lake Sammamish, Pine Lake, Pine Lake Creek, Ebright Creek, Laughing Jacobs Creek, etc.) under the 303(d),as category 5, for not meeting water quality standards or assigned criteria. Note that impaired water bodies under 303(d) list are categorized from category 1 to 5, and all listed impaired water bodies within Sammamish are identified as the most severely degraded category 5, which triggers water quality management plans, known as TMDL plans. Adoption of these proposed ECA items will lead to further degradation of already classified the most severely degraded water bodies, which is prohibited under WAC 173-201A-310. I have included the text of WAC 173-201A-310 in verbatim below for your review:

WAC 173-201A-310	
-------------------------	--

Tier i — protection and maintenance of existing
--

and designated uses.

(1) Existing and designated uses must be maintained and protected. No degradation may be allowed that would interfere with, or become injurious to, existing or designated uses, except as provided for in this chapter.

(2) For waters that do not meet assigned criteria, or protect existing or designated uses, the department will take appropriate and definitive steps to bring the water quality back into compliance with the water quality standards.

(3) Whenever the natural conditions of a water body are of a lower quality than the assigned criteria, the natural conditions constitute the water quality criteria. Where water quality criteria are not met because of natural conditions, human actions are not allowed to further lower the water quality, except where explicitly allowed in this chapter.

[Statutory Authority: Chapters 90.48 and 90.54 RCW. 03-14-129 (Order 02-14), § 173-201A-310, filed 7/1/03, effective 8/1/03.]

Also, another water quality regulation or policy known as “no backsliding” may be applicable to some of these proposed ECA items. No backsliding simply means that a new regulation that may result in relaxation and reduction of the environmental benefits cannot replace a more environmentally protective existing regulation. Particularly, by adopting Item 3-19, we will increase current wetland exemption from 1,000 to 4,000 sq ft and consequently allowing a significant backsliding of the current regulation and causing further worsening of the already degraded water bodies.

I suggest that the City consults with the City Attorney and Department of Ecology about the legal implications of these items, particularly about their inherent conflicts with state and federal laws. Please add this email as a public comment to ECA website for a greater understanding of this important issue by our citizens and stakeholders.

Debbie Beadle

From: Evan Maxim
Sent: Thursday, September 20, 2012 12:19 PM
To: Debbie Beadle
Subject: FW: Staff Evaluations and Ratings Form for Item 3-19 is inaccurate and misleading, needs revision.
Attachments: Small wetlands exemption response..docx
Categories: Waiting Recall

Public Comment

EXHIBIT NO. 216
Evan Maxim
Senior Planner
City of Sammamish
425.295.0523

From: Mahbubul Islam [mailto:Islam.Mahbubul@epamail.epa.gov]
Sent: Tuesday, September 18, 2012 3:44 PM
To: Evan Maxim
Cc: Kamuron Gurol; Susan Cezar; Kathy Richardson; Michael Luxenberg
Subject: Staff Evaluations and Ratings Form for Item 3-19 is inaccurate and misleading, needs revision.

Hi Evan,

In the current evaluation form for Item 3-19, the first sentence (The proposed amendment will bring the Sammamish Municipal Code into alignment with peer jurisdiction code and Washington State regulating agencies suggested best practices.) is factually incorrect. To verify the first part of this sentence, "The proposed amendment will bring the Sammamish Municipal Code into alignment with peer jurisdiction code", I suggest that we review the three contiguous cities' (Sammamish, Issaquah, and Redmond) exemption codes (reproduced below). Neither Redmond nor Issaquah exempts wetlands as large as 4000 sq. ft. wetlands. Our current exemption of 1,000 sq. ft. falls in the middle of Redmonds 250 sq. ft. exemption and Issaquah's 2500 sq. ft. exemption.

Sammamish Code: SMC 21A.50.320 Wetlands – Limited Exemption.

Isolated wetlands less than 1,000 square feet may be exempted from the provisions of SMC 21A.50.290 and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.

Issaquah Code 18.10.0620.A.1.d. Category IV wetlands less than 2500 square feet scoring less than thirty points on the Western Washington Rating System are not regulated.

Redmond: RZC 21.64.010. (D) Exemptions.

(1) The following activities shall be exempt from the provisions of this chapter:

(m) Activities affecting category IV wetlands which are 250 square feet in size or smaller and hydrologically isolated

For the second part of the sentence " into alignment with ...Washington State regulating agencies suggested best practices", I can't understand what best practices of a state agency you are referring to. If you are referring to Ecology, then please carefully review the attached response from Ecology that you had graciously obtained from me. In response to my first question, Ecology staff responds, "Ecology's preference would be to use the language in the Small Cities Guidance document...." In response to my second question, Ecology staff responds, ". Again, it is Ecology's preference to follow the official guidance in the Small Cities Guidance document." Now, if we follow the Ecology's official small cities guidance document which is appropriately cited in the evaluation form, the size based exemption language is only found in pages A-3 and A-4, under the header: XX. 040 exemptions and allowed uses in wetlands. The relevant text in verbatim under this header is as follows:

"1. All isolated category III and IV wetlands less than 1,000 feet that:
a. are not associated with riparian areas or buffers
b. are not part of a wetland mosaic.
c....."

Only conclusion I can deduce from Ecology's small cities guidance document is that a jurisdiction can exempt category III and IV isolated wetlands less than 1000 feet. There is no such suggested best practices to exempt 4,000 sq. ft wetland in the guidance document.

Please explain if I am not understanding your data and assumptions appropriately; Otherwise, please change the form to reflect facts and information. I would also request that you consider this email as a public comment and post it on the ECA website accordingly.

Thanks,
Mahbubul Islam

☞ Evan Maxim ---07/25/2012 10:59:58 AM---FYI - This will be logged as public comment and sent along to the whole Commission shortly...

From: Evan Maxim <emaxim@ci.sammamish.wa.us>
To: Mahbubul Islam/R10/USEPA/US@EPA,
Cc: Kamuron Gurol <kgurol@ci.sammamish.wa.us>, Susan Cezar <scezar@ci.sammamish.wa.us>, Kathy Curry <kcurry@ci.sammamish.wa.us>, "Carl de Simas" <cdesimas@ci.sammamish.wa.us>, Debbie Beadle <dbeadle@ci.sammamish.wa.us>
Date: 07/25/2012 10:59 AM
Subject: FW: ECA update - Follow up questions re: DOE 5/1/2012 public comments

FYI –

This will be logged as public comment and sent along to the whole Commission shortly...

Regards,

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

From: Bunten, Donna (ECY) [<mailto:DBUN461@ECY.WA.GOV>]

Sent: Wednesday, July 25, 2012 10:11 AM

To: Evan Maxim

Cc: Kathy Curry; Kamuron Gurol; Susan Cezar; Carl de Simas; Debbie Beadle; McGraner, Patrick (ECY)

Subject: RE: ECA update - Follow up questions re: DOE 5/1/2012 public comments

Hello, Evan,

Attached is a written response to the Planning Commissioners' questions. Please let us know if you have additional questions.

Donna J. Bunten

CAO Review Coordinator

Dept. of Ecology

PO Box 47600

Olympia, WA 98504-46700

(360) 407-7172

donna.bunten@ecy.wa.gov

From: Evan Maxim [<mailto:emaxim@ci.sammamish.wa.us>]

Sent: Monday, July 23, 2012 3:46 PM

To: McGraner, Patrick (ECY); Bunten, Donna (ECY)

Cc: Kathy Curry; Kamuron Gurol; Susan Cezar; Carl de Simas; Debbie Beadle

Subject: ECA update - Follow up questions re: DOE 5/1/2012 public comments

Hello,

One of our Planning Commissioners had some follow up questions to your public comment letter; I am hoping you would be willing to provide a written response.

1. It appears that the text under recommended regulatory approach for small wetlands is an excerpt of the Ecology's staff working paper on this subject. The excerpt includes approaches for wetlands between 0 and 4,000 square feet. Yet, in the final outcome of the draft language that survived and appeared in the Ecology's officially published technical guidance document, "Wetlands and CAO Updates: Guidance for Small Cities, Western Washington Version (1st revision July 2011, publication no. 10-06-002)" only includes an exemption for isolated wetlands less than 1000 square feet that meet some additional criteria. Doesn't Ecology's final suggestion to limit the size based exemption go up to only 1000 square feet?

2. Mr. McGraner's attached excerpt has texts such as "End of Draft Regulatory Language." Has there been a final version of the Regulatory Language that we should rely on for our ECA Update?

3. Is Sammamish, a city with population of nearly 50,000, which has extensive ECA regulations from the inception with many well studied basin and sub-basins, fall into the criteria of "small cities" for which this guidance is intended for?

Regards,

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

Please be aware that email communication with Council Members or City staff is a public record and is subject to disclosure upon request.

Please be aware that email communication with Council Members or City staff is a public record and is subject to disclosure upon request. (See attached file: *Small wetlands exemption response..docx*)

1. It appears that the text under recommended regulatory approach for small wetlands is an excerpt of the Ecology's staff working paper on this subject. The excerpt includes approaches for wetlands between 0 and 4,000 square feet. Yet, in the final outcome of the draft language that survived and appeared in the Ecology's officially published technical guidance document, "Wetlands and CAO Updates: Guidance for Small Cities, Western Washington Version (1st revision July 2011, publication no. 10-06-002)" only includes an exemption for isolated wetlands less than 1000 square feet that meet some additional criteria. Doesn't Ecology's final suggestion to limit the size based exemption go up to only 1000 square feet?

Ecology's preference would be to use the language in the Small Cities Guidance document. Ecology staff emphasizes that it is not possible to conclude from size alone what functions and values a particular wetland is providing. Sections 5.3.3 and 5.3.4 of *Wetlands in Washington State, Volume 1: A Synthesis of the Science* (Ecology Publication #05-06-006, March 2005) emphasize that small wetlands and isolated wetlands provide many important functions. Many of these small and/or isolated wetlands are biologically unique systems that are critically important to amphibians. The loss of small wetlands results in increased fragmentation of habitat and greater distances between wetland patches (See Chapter 4 of Volume 1). This can have a significant effect on the ability of a landscape to support viable populations of wetland-dependent wildlife, including amphibians.

However, we recognize that many jurisdictions desire to place size thresholds on wetlands that are to be regulated, in order to focus staff time and attention on the most important natural resources. In order to assist jurisdictions in addressing this administrative need, while minimizing the impact on wetland functions, Ecology developed the 0-4,000 sf exemption language. When we were asked to produce a simplified version of our two-volume guidance documents that also included a sample CAO wetlands chapter, we further refined that language into what appears in the Small Cities Guidance. This is a strategy for exempting small wetlands that incorporates appropriate science-based criteria.

Also as a reminder, the proposed exemptions are from wetland buffer provisions and implicitly from the avoidance criterion but still require the impacts to be fully mitigated.

2. Mr. McGraner's attached excerpt has texts such as "End of Draft Regulatory Language." Has there been a final version of the Regulatory Language that we should rely on for our ECA Update?

There has not been any final version of the drafted language. Again, it is Ecology's preference to follow the official guidance in the Small Cities Guidance document.

3. Is Sammamish, a city with population of nearly 50,000, which has extensive ECA regulations from the inception with many well studied basin and sub-basins, fall into the criteria of "small cities" for which this guidance is intended for?

The Small Cities Guidance was written for the benefit of small jurisdictions that often lack the staffing and the in-house expertise to make determinations on technical issues related to wetlands regulations. However, this document was written with full consideration of current best available science and there is no reason why a jurisdiction of any size cannot use this document.